

Good morning Mr. Chairman and members of the committee. My name is Chris Olson. I am a Deputy Commissioner of Banking and Financial Institutions in the Department of Administration. I am glad to be here this morning and to have the opportunity to testify on House Bill 69.

As Representative McNutt explained, this bill will provide protections to Montanans who enter into residential mortgage loans, and will establish reasonable standards for licensing and for the business practices of residential mortgage lenders. Predatory lenders and abusive lending practices inflict real costs on borrowers and create negative opinions that unfairly may be applied to the entire mortgage lending industry. This bill will allow Montana to directly address unfair, deceptive and fraudulent mortgage lending practices.

Before I get to the body of the bill I want to explain two amendments we have proposed to the bill. Representative McNutt has approved the amendments and Bart Campbell has received them. The first amendment adds language to Section 5, subsection (2). This language has been approved by the FBI and must be present for the department to request fingerprint checks for license applicants. The second amendment is to Section 3, subsections (19) and (22), clarifying the definitions of "mortgage loan" and "residential real property".

Now I would like to provide some detail of this bill's provisions:

Section 1 is simply the title of the bill.

Section 2 provides that a person who is not exempt from the Act may not engage in the business of residential mortgage lending after October 1, 2007, unless they are licensed under the Act.

Section 3 contains definitions for terms pertinent to the Act.

Sections 4 through 10 address the licensing process:

- A licensee may not do business using a name other than that on file with the department and appearing on the license.
- A written application must be filed for the initial license. The application will include personal, financial, and criminal history information on principal officers, directors and controlling interests to assure the department that the applicant and its related parties have the appropriate financial means, character, fitness, background and experience to engage in the residential mortgage lending business. It also must include affirmations by the applicant regarding the adequacy of staffing and operating procedures.
- The fee for the initial license is \$750 for the main office and \$250 for each branch location. License fees, and all other fees collected under this Act, will be deposited in the department's special revenue account to be used by the department in administering the provisions of the Act.
- A license is valid for one year. It may be renewed upon approval of a written application and payment of a renewal fee.
- A criminal and financial background check of the applicant and related parties must be performed by the department.
- License applicants must be bondable and must maintain a surety bond.
- Banks, savings banks, savings and loans, credit unions and trust companies are exempt from the Act because they already are subject to compliance examinations by state and federal agencies.
- Other exempted entities include lenders not engaged in residential mortgage lending; governmental agencies; persons who make 5 or fewer mortgage loans per year, for their own investment, using their own funds; pension funds making loans only to pension plan participants; and persons acting under authority conferred by a court.

Licenses are non-transferable and non-assignable. Section 11 addresses the process to be followed in the case of a change in ownership of a licensee. A new license in the name of the controlling party is required, although temporary licenses may

be issued by the department to allow continuity of operations pending approval of the new license.

Section 12 requires an annual audit of the licensee's books and accounts. The audit must be performed by an independent CPA, must encompass an appropriate scope of tests and reviews, and must include an expression of an opinion by the auditor. An audit performed in accordance with the requirements of government programs may be acceptable.

Section 13 addresses the particulars of the required surety bond: it is for the recovery of expenses, fines or fees levied by the department, and for damages incurred by borrowers as a result of the licensee's noncompliance with the Act. The minimum bond amount will be set by the department by administrative rule.

Section 14 outlines the proper handling of funds remitted to a licensee to pay a borrower's taxes, insurance or other required payments.

Section 15 sets recordkeeping requirements and gives the department the authority to review and examine the records. The records must be maintained at the licensee's principal place of business or other approved location.

Section 16 sets forth prohibited practices. Among these are prohibitions related to improper or inadequately documented disbursements of loan funds; activities that may misrepresent, mislead, deceive, or improperly influence parties to a loan transaction; and false advertising.

Section 17 makes a violation of the federal Real Estate Settlement Procedures Act or the federal Truth in Lending Act a violation of this Act as well.

Sections 18 through 20 address the taking, withholding or misappropriation of a licensee's property or funds; a borrower's property or funds; the making of false entries

on a licensee's records; and not making required entries. These actions are violations of the Act and may be criminal violations as well.

Section 21 establishes the time limit for disclosing the costs of the mortgage loan, requires disclosure if a prepayment penalty may be charged, limits the types of fees and charges that may be paid before a loan closes, and requires the refund of certain fees in certain situations.

Sections 22 through 29 pertain to the regulatory, supervisory and enforcement activities of the department as they relate to residential mortgage lending.

- The department may promulgate administrative rules to implement the provisions of the Act
- Under certain circumstances the department may suspend or revoke licenses, impose civil money penalties, require restitution, and recover costs, after providing appropriate notice and opportunity for a hearing under MAPA
- Under certain circumstances the department may reinstate a suspended or revoked license
- The department may investigate activities that may be in violation of the Act, and may issue subpoenas in connection with the investigation
- The department may issue cease and desist orders after providing appropriate notice and opportunity for a hearing
- If the department believes any person is violating the Act, it may move forward with an injunctive proceeding in state district court
- The department may require reports from licensees, may levy fines for late reports, and may suspend or revoke licenses for non-reporting
- The department may conduct examinations of the books, records and operations of a licensee or a person required to be licensed. An examination report must be issued to the licensee, who has an opportunity to respond. The examination findings and report are confidential, except that information may be disclosed to law enforcement and other state or federal agencies for further investigation and

enforcement. The expenses of the examination will be paid by the licensee and deposited to the department's special revenue account.

Section 29 prohibits a person convicted of certain crimes within the past 10 years from serving as an officer, director, partner, trustee, independent contractor, employee or controlling shareholder of a licensee, without first receiving prior, written approval from the department. The offenses include robbery, burglary, theft, embezzlement, fraud, forgery, and similar financial crimes.

Section 30 provides that a person who knowingly violates the Act may be subject to a fine not to exceed \$10,000 for each violation, imprisonment for not more than one year, or both. Fines collected are deposited to the state general fund.

Section 31 provides that the department may refer evidence of violations to the state attorney general or the appropriate county attorney.

Section 32 allows the department to pursue disciplinary action against a licensee in response to actions against the licensee taken by another state or federal agency, if the action is substantially related to an activity regulated by the Act.

Section 33 amends Section 31-1-111, adding residential mortgage lender licensees to the list of entities considered to be regulated lenders.

The department appreciates your consideration of this bill and respectfully requests passage. I will be happy to answer any questions that you may have.